

Commonwealth of Massachusetts  
HAMPDEN SUPERIOR COURT  
Case Summary  
Civil Docket

05-30096-111N

HDCV2005-00378  
Colemon v Kawasaki Motors Corp U S A

File Date	04/11/2005	Status	Disposed: transferred to other court (dtrans)		
Status Date	04/26/2005	Session	A - Civil A - CtRm 6		
Origin	1	Case Type	B05 - Products liability		
Lead Case		Track	A		

Service	07/10/2005	Answer	09/08/2005	Rule12/19/20	09/08/2005
Rule 15	07/05/2006	Discovery	05/31/2007	Rule 56	07/30/2007
Final PTC	11/27/2007	Disposition	04/10/2008	Jury Trial	Yes

PARTIES

**Plaintiff**  
Dennis Colemon  
Active 04/11/2005

**Private Counsel 646810**  
Carolyn L McCaffrey  
Fitzgerald Law Offices (Frank P)  
1391 Main Street  
Suite 600  
Springfield, MA 01103  
Phone: 413-732-2825  
Fax: 413-732-3346  
Active 04/11/2005 Notify

**Defendant**  
Kawasaki Motors Corp U S A  
Served: 04/18/2005  
Served (answr pending) 04/22/2005

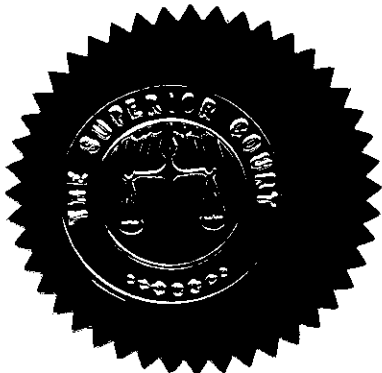
**Private Counsel 648259**  
Gregg P Bailey  
Cornell & Gollub  
75 Federal Street  
Boston, MA 02110  
Phone: 617-482-8100  
Fax: 617-482-3917  
Active 04/26/2005 Notify

FILED  
CLERK'S OFFICE  
U.S. DISTRICT COURT  
DISTRICT OF MASS.  
MAY 13 A 10:52

ENTRIES

Date	Paper	Text
04/11/2005	1.0	Complaint & civil action cover sheet filed
04/11/2005		Origin 1, Type B05, Track A.
04/22/2005	2.0	Affidavit of compliance with long-arm statute with proof of service on out of state defendant Kawasaki Motors Corp U S A
04/26/2005	3.0	Notice and Copy of Petition for Removal to the United States District Court filed by Kawasaki Motors Corp U S A.

EVENTS



A TRUE COPY  
OF THE DOCKET MINUTES:  
IN WITNESS WHEREOF, I hereunto  
set my hand, and have caused the seal  
of the Superior Court for the County  
of Hampden to be affixed on this  
6th day of May, 2005  
Karen Spindler  
Deputy Asst. Clerk

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SUPERIOR COURT DEPT.  
OF THE TRIAL COURT  
CIVIL ACTION NO.: 05 378

DENNIS COLEMON,

Plaintiff,

v.

KAWASAKI MOTORS CORP., U.S.A.,  
Defendant

HAMPDEN COUNTY  
SUPERIOR COURT  
FILED  
APR 22 2005  
Danie Shugra  
CLERK-MAGISTRATE

**AFFIDAVIT OF  
LONGARM SERVICE**

Now comes CAROLYN L. MCCAFFREY, ESQ. of Springfield, County of Hampden,  
Commonwealth of Massachusetts, attorney for the Plaintiff, and being duly sworn, deposes  
and says that:

1. On April 13, 2005, as attorney for the said plaintiff, I forwarded to the defendant, KAWASAKI MOTORS CORP., U.S.A, by certified mail, return receipt requested, to the address of the agent for service, for the said defendant, KAWASAKI MOTORS CORP., U.S.A, 9950 Jeronimo Road, Irvine, CA 96218, notice of the institution of the above-captioned action, together with copies of the Complaint, Summons and Civil Action Cover Sheet.
2. On or about April 21, 2005, I received from the U.S. Postal Service, Springfield, the certified mail return receipt appended hereto pertaining to the item of certified mail mentioned in paragraph 1.
3. This Affidavit of Compliance is executed in pursuance of the requirements of M.G.L.A. Chapter 223A, Section 6.

*Carolyn McCaffrey*  
CAROLYN L. MCCAFFREY, ESQ.

BBO #646810

1391 Main Street, Suite 600

Springfield, MA 01103

(413) 732-2825

(413) 732-3346 Fax

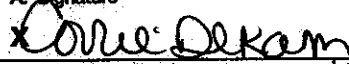
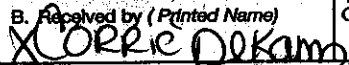
SUBSCRIBED AND SWORN TO THIS 22nd DAY OF APRIL, 2005 BEFORE ME,

*Shela Wheeler*  
SHELA WHEELER, Notary Public

My Commission Expires: 03/16/2012

**Attest:**

*Karen Spindler*  
Deputy Assistant Clerk

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature   <input type="checkbox"/> Agent  <input checked="" type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p>Agent For Service            Kawasaki Motors Corp.            9950 Jeronimo Road            Irvine, CA 96218-2014</p>		<p>B. Received by (Printed Name)   </p> <p>C. Date of Delivery            7/18/05</p>	
<p>2. Article Number            (Transfer from service label)</p>		<p>D. Is delivery address different from item 1? <input checked="" type="checkbox"/> Yes            If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>PS Form 3811, August 2001</p>		<p>Domestic Return Receipt</p>	



7004 1350 0005 6386 6420

102595-02-M-1540

UNITED STATES POSTAL SERVICE



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

RETURN TO: *CLN/SW*  
**FRANK P. FITZGERALD, P.C.**  
1391 Main Street, Suite 600  
Springfield, MA 01103

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SUPERIOR COURT  
DEPARTMENT OF THE TRIAL COURT  
CIVIL ACTION  
NO. 05 378

DENNIS COLEMON, PLAINTIFF(S)

V.

SUMMONS

KAWASAKI MOTORS CORP., USA, DEFENDANT(S)

To the above named defendant:

You are hereby summoned and required to serve upon

Carolyn L. McCaffrey, Esquire  
1391 Main St., Ste 600, Spfld., MA, plaintiff's attorney, whose address is  
you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do  
so, judgment by default will be taken against you for the relief demanded in the complaint. You are also  
required to file your answer to the complaint in the office of the Clerk of this court at Springfield either before  
service upon the plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by rule 13(a), your answer must state as a counterclaim any claim which  
you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter  
of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Barbara J. Rouse, Esquire

Witness, Suzanne V. DelVecchio, Esq., at Springfield the \_\_\_\_\_ day of  
\_\_\_\_\_ in the year of our Lord two thousand ~~five~~ five.



Clerk / Magistrate

NOTES:

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all such defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.

<b>CIVIL ACTION COVER SHEET</b>		Trial Court of Massachusetts <b>SUPERIOR COURT DEPARTMENT</b> County: <b>HAMPDEN</b>		Docket Number: <b>05-378</b>
PLAINTIFF(S)  <p style="text-align: center;"><b>Dennis Colemon</b></p>		DEFENDANT(S)  <p style="text-align: center;"><b>Kawasaki Motors Corp., USA</b></p>		
ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE - Carolyn L. McCaffrey, Esquire, Frank P. Fitzgerald, P.C. 1391 Main Street, Suite 600, Springfield, MA 01103 (413) 732-2825  Board of Bar Overseers Number 646810		ATTORNEY (if known) -		
<b>Origin code and track designation</b>				
Place an x in one box only: X 1. F01 Original Complaint <input type="checkbox"/> 2. F02 Removal to Sup. Ct. C. 231, s. 104 (Before trial) <input type="checkbox"/> 3. F03 Retransfer to Sup. Ct. C. 231, s. 102C <input type="checkbox"/> 4. F04 District Court Appeal c. 231, s. 97 & 104 (After trial) <input type="checkbox"/> 5. F05 Reactivated after rescript; relief from judgment/ Order (Mass. R. Civ. P. 60) <input type="checkbox"/> 6. E10 Summary Process Appeal				
<b>TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)</b>				
CODE NO.	TYPE OF ACTION (specify)	TRACK	IS THIS A JURY CASE?	
<u>B05</u>	<u>Products Liability</u>	( A )	( X ) Yes ( ) No	
<b>The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.</b>				
<b>TORT CLAIMS</b> (Attach additional sheets as necessary)				
<div style="float: right; text-align: right;"> <b>HAMPDEN COUNTY SUPERIOR COURT FILED APR 11 2005</b>  <i>Marie Maggione</i>          CLERK-MAGISTRATE       </div>				
A.	Documented medical expenses to date:			
1.	Total hospital expenses.....		\$	3,036.22
2.	Total Doctor expenses.....		\$	35,482.34
3.	Total chiropractic expenses.....		\$	0.00
4.	Total physical therapy expenses.....		\$	0.00
5.	Total other expenses.....		\$	2,816.50
			<b>Subtotal</b>	<b>\$ 41,335.06</b>
B.	Documented lost wages and compensation to date.....			\$ 68,855.28
C.	Documented property damages to date.....			\$ 0.00
D.	Reasonable anticipated future medical and hospital expenses.....			\$ 0.00
E.	Reasonable anticipated lost wages.....			\$ 596,745.76
F.	Other documented items of damages (describe):			\$ 0.00
G.	Brief description of plaintiff's injury, including nature and extent of injury (describe): On or about April 12, 2002, while the Plaintiff was operating his 2001 Kawasaki motorcycle, oil leaked from the alternator causing loss of traction resulting in an accident, causing the Plaintiff to suffer severe injuries. Specifically, Plaintiff suffered a severe crush injury to the right foot, including second-degree skin loss over entire foot, and right shoulder rotator cuff tendinitis.			
<b>TOTAL</b>				<b>\$ 706,936.10</b>
<b>CONTRACT CLAIMS</b> (Attach additional sheets as necessary)				
Provide a detailed description of claim(s):				
<b>TOTAL</b>				<b>\$</b>
PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT:				
"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of various methods."				
Signature of Attorney of Record			DATE: April 11, 2005	



True copy.

Attest:

*Karen Spindler*  
 Deputy Assistant Clerk

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

HAMPDEN COUNTY  
SUPERIOR COURT  
**FILED**

APR 11 2005

SUPERIOR COURT DEPT.  
OF THE TRIAL COURT  
CIVIL ACTION NO.:

05: 378

DENNIS COLEMON,

Plaintiff,

*Marie S. Magga*  
CLERK-MAGISTRATE

v.

**COMPLAINT AND**  
**JURY DEMAND**

KAWASAKI MOTORS CORP., U.S.A.,  
Defendant

**PARTIES**

1. The Plaintiff, Dennis Colemon, is an individual residing at 49 Cortland Street, in Springfield, Hampden County, Massachusetts.
2. The Defendant, Kawasaki Motors Corp., U.S.A., on information and belief is a corporation organized under the laws of the State of Delaware with a principal place of business located at 9950 Jerinomo Road, Irvine, California.
3. Jurisdiction over the Defendant is conveyed upon this court under G.L. c. 223A, §3.

**COUNT I**

(Breach of Express and Implied Warranty)

4. The Plaintiff incorporates and realleges the allegations of paragraphs 1 through 3 as if fully stated herein.
5. The Defendant, Kawasaki Motors Corp., U.S.A., designed, selected parts and materials for, developed, manufactured, assembled, packaged, tested, advertised, promoted, marketed and sold a certain 2001 Kawasaki motorcycle, Model No. ZX1200A2, VIN/Serial No. JKAZX9A111A025526.
6. On or about February 25, 2002, the Plaintiff purchased the 2001 Kawasaki motorcycle, Model No. ZX1200A2, VIN/Serial No. JKAZX9A111A025526, which was manufactured and sold by the Defendant, Kawasaki Motors Corp., U.S.A, from Baer's Cycle Sales, Inc., a local authorized distributor of the product. The Plaintiff was an individual who would have reasonably been expected to use, consume or be affected by the 2001 Kawasaki motorcycle, Model No. ZX1200A2.

No. of Pkts. 1  
Fee Paid - \$ 246  
Surcharge Paid - \$ 26  
Security Fee - Paid - \$ 15  
Received by: *[Signature]*  
Cash - Check  
Cash - Check  
Cash - Check



7. On or about April 12, 2002, while the Plaintiff was operating the 2001 Kawasaki motorcycle, Model No. ZX1200A2, in Springfield, Massachusetts, for the purpose and in the manner in which it was intended to be used, oil leaked from the alternator lead connector and deposited onto the rear tire and/or road causing a loss of traction, resulting in an accident, causing Plaintiff to suffer severe injuries.
8. Thereafter, in December, 2002, Plaintiff received a notice from Defendant, Kawasaki Motors Corp, U.S.A. Said notice acknowledged Plaintiff purchased a 2001 Kawasaki motorcycle, Model No. ZX1200A2, and that said model is defective in that "oil leaking from the alternator lead connector can be deposited onto the rear tire creating the potential for a loss of traction and an accident resulting in injury or death."
9. The Defendant, Kawasaki Motors Corp., U.S.A., impliedly warranted that the 2001 Kawasaki motorcycle, Model No. ZX1200A2 was of merchantable quality, fit for the purposes for which it was designed and manufactured, fit for the specific purpose for which it was intended to be used, and that adequate warnings and instructions were provided to purchasers and end-users.
10. The Defendant, Kawasaki Motors Corp., U.S.A., breached its implied warranty in that the product was not of merchantable quality, fit for the purposes for which it was designed and manufactured, fit for the specific purpose for which it was intended to be used, and that adequate warnings and instructions were not provided to purchasers and end-users.
11. The Defendant, Kawasaki Motors Corp., U.S.A., expressly warranted by affirmation of fitness, safety and merchantability that the 2001 Kawasaki motorcycle, Model No. ZX1200A2 was safe in its intended use and safe for use by persons such as the Plaintiff.
12. The Defendant, Kawasaki Motors Corp., U.S.A., breached its express warranty in that the 2001 Kawasaki motorcycle, Model No. ZX1200A2 was not safe for its intended use or for the use of persons such as the Plaintiff.
13. As a direct and proximate result of Defendant's breach of the express and implied warranty, the Plaintiff suffered severe injuries causing him great pain of body and mind, incurred substantial medical expenses, and has suffered an impairment to his earning capacity.

COUNT II  
(Negligence)

14. The Plaintiff incorporates and realleges the allegations of paragraphs 1 through 13 as if fully stated herein.
15. The injuries sustained by the Plaintiff were the direct and proximate result of the



negligence of the Defendant, Kawasaki Motors Corp., U.S.A., as follows:

- a) Defendant negligently designed, developed, assembled, manufactured, inspected, tested, marketed, advertised, sold and distributed said 2001 Kawasaki motorcycle, Model No. ZX1200A2;
  - b) Defendant negligently failed to warn or instruct Plaintiff and other users of the product of its dangerous and defective characteristics, and of the safe and proper method of using said product.
16. As a direct and proximate result of the Defendant's negligence, Plaintiff suffered severe injuries causing him great pain of body and mind, incurred substantial medical expenses, and has suffered an impairment to his earning capacity.

**COUNT III**  
(Strict Liability)

17. The Plaintiff incorporates and realleges the allegations of paragraphs I through 16 as if fully stated herein.
18. The Defendant, Kawasaki Motors Corp., U.S.A., manufactured and/or placed upon the market a certain 2001 Kawasaki motorcycle, Model No. ZX1200A2, VIN/Serial No. JKAZX9A111A025526, which was intended by the Defendant for use by consumers such as Plaintiff.
19. The Defendant, Kawasaki Motors Corp., U.S.A., through its agent sold the hereinabove described 2001 Kawasaki motorcycle, Model No. ZX1200A2, VIN/Serial No. JKAZX9A111A025526 to the Plaintiff.
20. The Defendant expected the hereinabove described 2001 Kawasaki motorcycle, Model No. ZX1200A2 to reach the ultimate consumer, the Plaintiff, without substantial change in the condition in which it was sold and upon information and belief the hereinabove described 2001 Kawasaki motorcycle, Model No. ZX1200A2 did reach the Plaintiff without substantial change in the condition in which it was sold.
21. Defendant knew that this 2001 Kawasaki motorcycle, Model No. ZX1200A2 would be used without inspection for defects, and by placing it upon the market represented that it would be safe when used by consumers.
22. The 2001 Kawasaki motorcycle, Model No. ZX1200A2 was unreasonably dangerous to the user and unsafe for its intended use by reason of the design of motorcycle, including without limitation the alternator lead connector, which leaked oil onto the rear tire and/or road, causing a loss of traction and an accident.
23. The Plaintiff was unaware of the defect in the 2001 Kawasaki motorcycle, Model No. ZX1200A2 hereinabove alleged, which made it unsafe for its intended use.

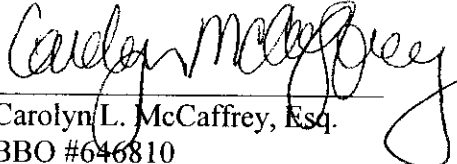
24. As a direct and proximate result of the defective design of the 2001 Kawasaki motorcycle, Model No. ZX1200A2, the Plaintiff suffered a severe injuries causing him great pain of body and mind, incurred substantial medical expenses, and has suffered an impairment to his earning capacity.

WHEREFORE, the Plaintiff, Dennis Colemon, hereby prays as follows:

1. That Judgment be entered against Kawasaki Motors Corp., U.S.A. pursuant to all Counts of Plaintiff's Complaint and award to the Plaintiff, Dennis Colemon, damages plus interest and costs of suit; and
2. For such other and further relief as this Court deems just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY

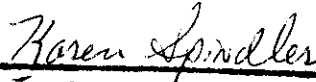
THE PLAINTIFF,  
DENNIS COLEMON  
By his attorney,

 4/11/05  
Carolyn L. McCaffrey, Esq.  
BBO #646810  
Frank P. Fitzgerald, P.C.  
1391 Main Street, Suite 600  
Springfield, MA 01103  
(413) 732-2825  
Fax (413) 732-3346



A true copy.

Attest:

  
Deputy Assistant Clerk